

January 24, 2006

In the Matter of)
)
) EB Docket No. 04-296
Review of Emergency Alert System)
)

EchoStar Satellite L.L.C. (“EchoStar”) hereby submits its comments in response to the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”) in the above referenced proceeding.¹ EchoStar responds to two issues raised in the FNPRM: 1) whether direct broadcast satellite (“DBS”) providers should be required to deliver state and local emergency alert system (“EAS”) messages; and 2) whether, and to what extent, DBS providers should be subject to weekly test transmission requirements. In sum, a local EAS requirement for national satellite providers is not justified by the public interest: it is inconsistent with the national nature of the satellite infrastructure, would entail an inefficient duplication of resources, would be technologically cumbersome for satellite providers, and would in fact detract from the national alertness by causing superimposition and mutual cancellation of alert messages from a multiplicity of sources. As for the weekly test transmission requirement, it would add little to the testing requirement that the Commission has already prescribed

¹ *Review of the Emergency Alert System, First Report and Order and Further Notice of Proposed Rulemaking*, EB Docket No. 04-296, FCC 05-191 (rel. Nov. 10, 2005) (“EAS FNPRM”).

for DBS providers, and it would likewise engender confusion, apathy, and false impressions in consumers' minds.

I. BACKGROUND

EchoStar is a multichannel video programming distributor ("MVPD") that provides video and other programming by DBS satellites to subscribers throughout the United States. The bulk of the programming is transmitted to every subscriber across the nation simultaneously by means of the "CONUS" beams on EchoStar's geostationary satellites. The subscriber's individual service is controlled at his/her set-top box. Through bits of data sending commands to software embedded in the set-top box, EchoStar is able to authorize the programming services a subscriber receives and turn that subscriber's service on and off. EchoStar's system is not designed to superimpose on a program individualized information and provide it to hundreds of set-top boxes simultaneously and instantaneously.

Over the last few years, EchoStar also has integrated into its system spot-beam satellites that allow it to provide targeted service into a more limited geographic area.² EchoStar uses spot beams to offer "local-into-local" service -- the retransmission of local broadcast stations back into these markets.

In its most recent Emergency Alert System Order, the Commission extended the emergency alert system ("EAS") rules to DBS providers.³ According to the Order, DBS providers must upgrade their current system in order to provide national EAS alerts by May 31, 2007.⁴

² See File No. SAT-MOD-20051221-00267.

³ 47 C.F.R. Part 11. See also EAS FNPRM at ¶¶53-58.

⁴ See EAS FNPRM at ¶56.

Furthermore, as part of their local-into-local service, DBS providers are required to retransmit all of the embedded EAS data that are provided by the local broadcast station.⁵ The Commission also applied monthly testing requirements to DBS providers. Recognizing that “requiring a DBS provider to conduct its weekly and monthly test on all channels simultaneously may pose problems,” the Commission submitted these providers to a more flexible requirement: they must conduct EAS tests on at least 10% of the channels they provide each month.⁶ This flexibility reflects an appropriate balance among the value of a national EAS system, the substantial burden that DBS providers would have to shoulder if they were required to overhaul their systems to provide all state and local EAS alerts and conduct weekly tests on their channels, and the questionable and potentially negative benefit from such a duplicative set of alerts.

II. DISCUSSION

A. Mandatory State and Local EAS Transmissions

Mandatory transmission of every state and local EAS message by DBS providers would not further the Commission’s goal of creating an “effective alert and warning system.”⁷ Instead, such a requirement would lead to an inefficient duplication of resources, as well as a duplication (or worse, mutual cancellation) of alerts and confusion among DBS subscribers.

In the FNPRM, the Commission asks: “should DTH providers design the capability into their transmission systems and their next generation digital set top boxes to deliver state and local EAS

⁵ See 47 C.F.R. §11.55(a)(1). See also EAS FNPRM at ¶55.

⁶ EAS FNPRM at ¶57.

⁷ *Id.* at ¶68.

alerts to only the appropriate state and local audiences?”⁸ The extraordinary difficulty and extent of changes that would have to be implemented in a DBS provider’s systems, compounded by the harm to the nation’s alertness that it could actually inflict even if it became feasible, make such a requirement unjustifiable under a public interest analysis.

First, DBS providers are limited in their ability to transmit a localized signal to their subscribers. Although past commenters have suggested that EchoStar could provide localized alerts through the use of its addressable set-top boxes,⁹ this assertion is incorrect. As EchoStar has stated in prior comments, the fact that it can individualize subscribers’ set-top boxes does not mean it can provide individualized signals to a large number of boxes on an immediate basis.¹⁰

The first obstacle that must be overcome is a lack of dedicated bandwidth. In order to ensure its ability to address a local EAS transmission to hundreds, or possibly thousands, of set-top boxes simultaneously and instantaneously, EchoStar would have to reserve an amount of bandwidth on each of its satellites. That bandwidth could not be used for any other service on the off chance a local EAS alert was issued. Considering the ever increasing demands placed on the finite amount of bandwidth authorized for DBS use, such an additional burden could have an adverse effect on DBS providers’ business.

The second obstacle is technology. Currently, EchoStar’s addressable set-top box system allows only for the transmission of bits of data directing the box to turn certain channels on or

⁸ *Id.*

⁹ See Comments of National Cable & Telecommunications Association, *filed in* EB Docket No. 04-296, at 16 (filed Oct. 29, 2004).

¹⁰ Reply Comments of EchoStar Satellite L.L.C., *filed in* EB Docket No. 04-296, at 2 (filed Nov. 29, 2004).

off. As EchoStar submitted in its earlier comments, the addition of a text messaging function to the addressability system would require complex and cumbersome software-level changes.¹¹

But even setting aside the technological obstacles, implementing such a text messaging function would create subscriber confusion as opposed to enhancing alertness. The Commission already requires EchoStar to pass through the EAS alerts provided on local broadcast stations in its local-into-local markets. If EchoStar were to begin inserting text messages into the video stream of a local station, that message may obscure the underlying EAS alert. As the local broadcast station is likely to have more detailed information, EchoStar's EAS alert may actually hinder a subscriber's ability to fully understand the nature of the emergency and what actions to take.

This makes the public interest analysis tip the scales heavily against such a requirement. The benefit from it would be modest if it existed at all. In those markets where EchoStar is providing local-into-local service, it is already retransmitting the local broadcast station, including any embedded EAS alerts.¹² Because subscribers already have access to these state and local EAS alerts, the duplicative alerts disseminated over a national system would not provide a significant improvement in the quality of the local alert system that is currently provided through the local distribution network. In fact, they would detract from that quality, or the two layers of alerts might obliterate one another and create consumer confusion. Optimally, the national EAS system should comprise national providers providing national alerts and local providers providing local alerts. The two should complement one another and duplication should be disfavored. In markets where EchoStar does not provide local-into-local service, it would likewise not be in the public interest for EchoStar to

¹¹ *Id.* at 3.

¹² 47 C.F.R. §11.55(a)(1).

have to transmit locally-relevant alerts to its national audience and falsely alarm millions of people not effected by the emergency.

B. Weekly Testing Requirements

The Commission also has sought comment on the application of weekly test transmission requirements to DBS providers.¹³ Under the current rules, DBS providers are required to retransmit the EAS header codes, audio attention signal, test script and EOM codes originated by the Local or State Primary sources on a monthly basis to at least 10% of their channels.¹⁴ Local broadcast stations that are rebroadcast into their local markets are excluded from this test because DBS providers already are required to pass through the EAS tests carried on those stations. DBS providers are also required to log all weekly EAS test messages they receive over the national alert system.¹⁵

While some form of weekly test transmission requirement may be possible once EchoStar upgrades its system to allow for receipt and transmission of national EAS alerts, a weekly test conducted over all channels would create subscriber confusion and nurture apathy, particularly if local broadcasters are also conducting weekly tests. The flood of test messages from both local and national alerts would indeed cause a “boy who cried wolf” shrugging off of real emergencies. It would also create the false impression among subscribers that all EAS alerts, including state and local alerts, will be provided over all of EchoStar’s channels.

¹³ EAS FNPRM at ¶68.

¹⁴ 47 C.F.R. §11.61(a)(1).

¹⁵ 47 C.F.R. §11.61(a)(2)(ii).

EchoStar recognizes the value of an efficient and ubiquitous emergency alert system; it respectfully submits, however, that requiring DBS providers to carry all state and local EAS alerts and to conduct weekly transmission testing would not be in the public interest.

III. CONCLUSION

EchoStar urges the Commission to take the foregoing comments into account in its development of a comprehensive emergency alert system.

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